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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|-----------------------|------------------|
| 10/615,736 | 07/09/2003 | Harold Smith | 45767/134319 | 1822 |
| 7590 | 09/21/2004 | | EXAMINER | |
| Daniel A. Crowe 211 N. Broadway, Suite 3600 1 Metropolitan Square Saint Louis, MO 63102 | | | PETRAVICK, MEREDITH C | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3671 | |

DATE MAILED: 09/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Km

| | | | |
|------------------------------|------------------------|---------------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 10/615,736 | SMITH, HAROLD | |
| | Examiner | Art Unit | |
| | Meredith C Petrvick | 3671 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on ____.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-13 is/are pending in the application.
 - 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) Claim(s) ____ is/are allowed.
- 6) Claim(s) 1-13 is/are rejected.
- 7) Claim(s) ____ is/are objected to.
- 8) Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 7/9/2003 is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. ____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 7/9/2003.
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: ____.

DETAILED ACTION

Claim Objections

1. Claim 11 is objected to because of the following informalities:
 - a. “small beam” should be --first beam-- for consistency. . Appropriate correction is required.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-7, 10 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Hughes, 1,019,153.

Hughes discloses a grader including;

- a first horizontally elongate beam (5)
- a second horizontally elongate beam (6)
- a linkage assembly (1, 2, 3) for releasably attaching the first beam to a lift unit

The second beam is longer than the first (Fig. 1). The grader is capable of being flipped over and pulled in a second direction.

Regarding claim 2, the both sides of the beams have two ground engaging edges (the edges where the sides of the beam connect to the bottom).

Regarding claims 3-4, the grader is capable of being lifted off the ground.

Regarding claim 5, a channel is between the back edge of the first beam and the front edge of the second beam.

Regarding claims 5-6, the beams are coupled by v-shaped bolts (7).

Regarding claim 10, the linkage assembly includes a linkage bolt (Fig. 1), a tug chain (8 or 9) and a key bolt (Fig. 1).

Regarding claim 13, beam (12) can be considered a snow removal attachment.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hughes in view of Aikle 1,663,965.

Hughes discloses the claimed device above. However, Hughes does not disclose the beam being I-beams.

Like Hughes, Aikele discloses a grader with beams connected to a linkage. Unlike Hughes, Aikele discloses making the beams from discarded railroad ties. The railroad ties are I-beams. Aikele discloses that this is economical (Page 1, lines 9-12).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the beams of Hughes from railroad ties that are I-beams as taught in Aikele as being economical.

6. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hughes.

Hughes discloses providing a material guard (12) on the second beam to contain material. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a duplicate on the other side, since it has been held that mere duplication of the essential working part of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis, Co.*, 193 USPQ 8.

7. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hughes in view of Turner US 2002/0084084.

Hughes discloses the device described above. However, Hughes does not disclose providing a weight bar on the small beam.

Like Hughes, Turner discloses a grade with beams. Unlike Hughes, Turner discloses providing a weight bar (55) on the beams. Turner teaches that the weight bar help with hard road surfaces (Paragraph 22).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the small beam of Hughes with a weight bar as taught in Turner as being helpful on a hard road surface.

8. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hughes in view of Fay et al. 5,289,879.

Hughes discloses the device described above. However, Hughes does not discloses a rake attached to the first beam

Like Hughes, Fay et al. discloses a grader with a beam. Unlike Hughes, Fay et al. discloses providing rakes (11) on the grader.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide rakes on the beam of Hughes as in Fay et al., in order to increase versatility of the grade by providing another finishing option.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Meredith C Petrvick whose telephone number is 703-305-0047. The examiner can normally be reached on M-T 8:00 a.m.- 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B Will can be reached on 703-308-3870. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Meredith C Petrvick
Patent Examiner
Art Unit 3671

September 20, 2004